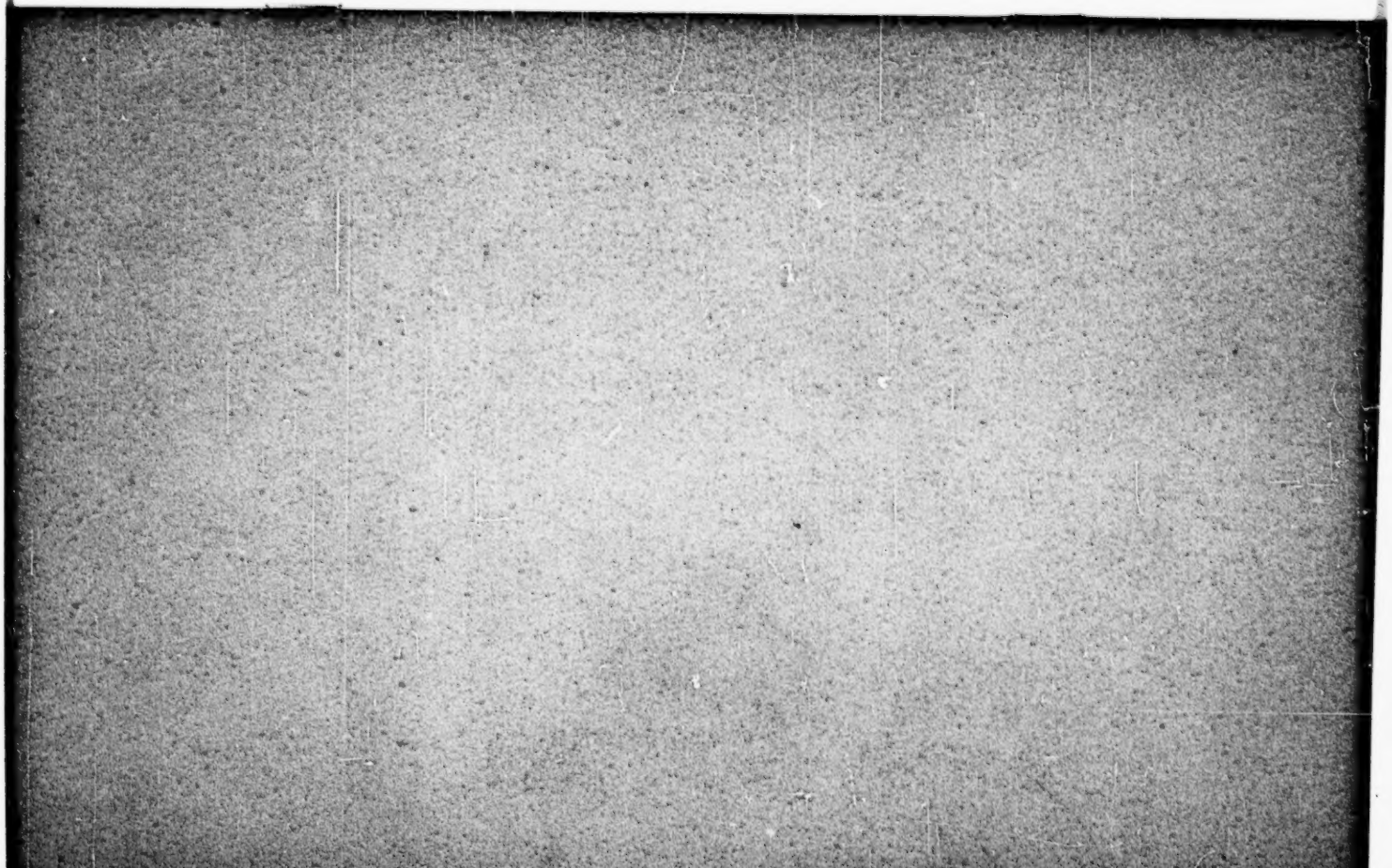

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-34

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 336, AFL-CIO,
Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	1
Statutes Involved	2
Statement of the Case	2
Argument	3
I. There Is No Conflict Between the Courts of Appeal	3
II. There Is No Substantial Federal Question	4
Appendix A	A1
Appendix B	A4

CITATIONS

Cases

Farowitz v. Associated Musicians, 241 F. Supp. 895 (S. D. N. Y. 1965)	5
NLRB v. Boeing Co., 412 U. S. 67 (1973)	2
Shilkret v. Musicraft, 131 F. 2d 929 (C. A. 2, 1942), cert. den. 319 U. S. 742 (1942)	7
Spokane & Inland R. R. Co. v. United States, 241 U. S. 344 (1916)	7

Miscellaneous

105 Daily Cong. Rec. A7915, Sept. 10, 1959, 2 Leg. Hist. 1811	5
105 Daily Cong. Rec. 9108-9, June 8, 1959, and A8510, Oct. 2, 1959, 2 Leg. Hist. 1280-1, 1844	5
105 Daily Cong. Rec. 14227, Aug. 11, 1959, 2 Leg. Hist. 1600	6

H. R. 8342 6

H. R. 8490 6

Sherman, The Individual Member and the Union: The Bill of Rights Title in the Labor-Management Reporting and Disclosure Act of 1959, 54 N. W. U. L. Rev. 803 (1960) 6

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OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 496 F. 2d 1. The decision of the district court is not officially reported. Both are reprinted in the appendix to the petition.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition, if it be assumed that the Court of Appeals had jurisdiction.

QUESTION PRESENTED.

Whether Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C. § 411) (com-

monly called the Landrum-Griffin Act) gives a union the power to prevent all other persons from receiving any legal assistance or encouragement of any kind from an interested employer in the defense of a suit brought by that union.

STATUTES INVOLVED.

The statutes primarily involved are quoted in Appendix A to this brief.

STATEMENT OF THE CASE.

After what page 4 of the petition correctly calls "a long and bitter economic strike," the Union purported to fine some of its members amounts ranging from $100 up to $500. Some 13 members refused to pay part of those fines, and were then sued in a state court in an action brought for the Union which is still pending. Those defendants have resisted that suit by seven affirmative defenses and by minor defensive counterclaims. Among their principal defenses are the complete failure of the Union to comply with Section 101(a)(5) of the Landrum-Griffin Act, and with the promises made by a Union agent named Murphy. (See Appendix B to this brief.) The Union's pleadings do not claim that these defenses are frivolous, nor do they question the workers' and the employer's honest belief that they will be sustained if properly presented. Since the individual employees could not afford an adequate defense for themselves, the employer has paid their legal fees. Compare *NLRB* v. *Boeing Co.*, 412 U. S. 67, 82 (1973) (dissenting opinion), in which Mr. Justice Douglas noted:

> "It is no answer to say that the reasonableness of a fine may be tested in a state-court suit. That envisages a rich and powerful union suing a rich and powerful employee. Employees, however, are often at the bottom of the totem pole, indigent, and unworldly when it comes to litigation. Such a suit is likely to be no contest."

It is highly probable that at least part of the legal costs of all the cases on union fines which have come to the attention of this Court were paid by interested employers.

This Union's first reaction was to try to invoke the National Labor Relations Act. But the General Counsel for the Board refused to issue a complaint in March, 1971, because the company had not committed any unfair labor practice. Nineteen months later the Union filed the present suit seeking (1) to enjoin the employer from paying any part of the cost of defense from the Union's suit to collect fines, or doing any other act which might be construed to "encourage" the individuals to resist the Union's actions against them; and (2) to collect the Union's attorneys' fees and costs in both courts from the employer. Clearly, this would deprive the Union's own members of their only real chance to defend their rights in the state court.

Although the worker-defendants affected by this case happen to be members of the Union, that fact is only incidental to the Union's reading of the statute. Its contentions would apply with equal force to any suit which the Union might bring against an individual who had never joined the Union or who might not even be a member of the bargaining unit. The Union clearly wants the employer excluded regardless of who may be sued.

ARGUMENT.

I. There Is No Conflict Between the Courts of Appeal.

Although the Landrum-Griffin Act was passed in 1959, page 7 of the petition concedes that "the issues raised herein are unique," and page 13 admits that "no direct conflict exists between the decisions of the . . . Courts of Appeal. . . ." (The only claim of any direct conflict is between a district court and a circuit court on a very minor point admittedly not involved here. Petition, p. 8.) So far as we can determine, this is the only case in 15 years in which any union has even at-

tempted to enjoin all employer participation in a lawsuit in which the union is the real plaintiff. This demonstrates that the sweeping assertions on pages 7, 8 and 14 of the petition about "far-reaching ramifications," "dangers," "unbearable weight," "prohibitive" cost, and "serious imbalance," are simply not true. Nor is there anything in this record (or out of it) which would support the claim made for the first time on page 14 of the petition that the grievances of the Union's members who refused to pay its fines are not "deeply felt." Even the Union's own complaint in this case does not challenge the good faith of those members who refused to pay up to $500 voluntarily. There is no disagreement by *any* other court with the Seventh Circuit's unanimous holding that the proviso to Section 101(a)(4) does not apply to an employer's payment of the legal fees of union member defendants in an action brought by the Union.

II. There Is No Substantial Federal Question.

The whole purpose of the Landrum-Griffin Act was to protect individual workers against serious abuses of power by unions which were supposed to be helping them. Section 101 is labeled a "bill of rights" and bristles with restrictions on labor organizations. Subparagraph (5) is especially pertinent here because it strictly limits a union's power to fine its members. Subparagraphs (2) and (4) have provisos which qualify their very broad restrictions to some extent. Thus the last proviso to subparagraph (4) (on which the Union here relies) forbids an interested employer not a party to finance "any such action" (meaning "an action in any court" which a member of a labor organization might "institute" against a union's interests). The decisive phrase in Section 101(a)(4) for this case begins with the twelfth word, i.e., "to institute an action. . . ." It is that specific kind of "action" which the last proviso calls "such action. . . ." The Court of Appeals dismissed this suit because there was no "such action." Clearly, the workers who

are being sued have not instituted any action at all. The suit in the state court to collect fines had been instituted *by the Union* for its own benefit and could easily be terminated by it at any time if it became burdensome to the Union.

None of the Congressional factions objected during the Landrum-Griffin debates to employers paying legal fees for worker-*defendants*. Thus Congressman Griffin, whose name is attached to this statute, said:

> "The last proviso in Section 101(a)(4) was added to make sure that the interested employers do not take advantage of rights accorded union members by encouraging or financing harassing suits or proceedings *brought by union members against their unions*. The purpose of the proviso should be kept in mind and it should not be so narrowly construed as to impose unnecessary or unintended restrictions upon employers in relationship with their employees." 105 Daily Cong. Rec. A7915, Sept. 10, 1959, 2 Leg. Hist. 1811 (compiled by N. L. R. B.), quoted in *Farowitz* v. *Associated Musicians*, 241 F. Supp. 895, 908 (S. D. N. Y. 1965). (All italics in this brief are ours unless otherwise noted.)

See also Senator Goldwater ("the right to *bring* a legal action"; "the bill also denies him protection if he is financed or encouraged *in his suit against the union* by an interested employer"; "the limitation . . . would apply only to employers who had a concrete interest in the litigation . . . other than the mere connection with the union member *bringing* the suit") 105 Daily Cong. Rec. 9108-9, June 8, 1959, and A8510, Oct. 2, 1959, 2 Leg. Hist. 1280-1, 1844. Rep. Foley ("the prohibition is limited [to] any individual action *instituted* by a member against his union. . . . But the Griffin bill does not prohibit every employer, only an interested employer, and the inhibited action involved is the particular action of a union member *against* his union or an officer. The prohibition is not against participating in *every* action involving a union under the act." "The provisos in both bills are designed to discourage employer *conception* of

lawsuits by individual members *against* unions.") 105 Daily Cong. Rec. 14227, Aug. 11, 1959, 2 Leg. Hist. 1600. Similarly, Section 101(a)(4) of H. R. 8342 by Representative Elliott, and the same section of H. R. 8490 by Representative Shelley, two of the alternatives to the Landrum-Griffin bill favored by some union supporters, expressly limited this proviso to "*any* action . . . instituted *against* any labor organization. . . ." (1 Leg. Hist. 699, 878), instead of using the word "such" which is found in the statute and produces the same result. A prominent union attorney writing about the proviso shortly after it was passed referred to it as "a defense, in appropriate cases, to a proceeding *brought by the member against* the interest of the union." *Sherman, The Individual Member and the Union: The Bill of Rights Title in the Labor-Management Reporting and Disclosure Act of 1959*, 54 N. W. U. L. Rev. 803, 820 (1960). Subparagraph (4) of the law is entitled "Protection of the right to sue," and does not deal in any way with suits by the union against its own members.

It is obvious why the Union's attorneys much prefer to sue the members by themselves. The amounts involved in this case are too small to justify adequate legal representation at the individual worker's expense, and it would be most unlikely that any group of individuals would be able to share their costs effectively. There would be little danger that the rules of Section 101(a)(5) on union fines or many of the other rights conferred by the Landrum-Griffin Act will ever be effectively enforced if all interested employers can be kept out of the picture.

It is also easy to see why Congress did not want to encourage the bringing of additional litigation *against* unions financed or encouraged by employers not parties. Where a union member is a plaintiff in a major case, he can usually bring a class suit involving a substantial fund and a contingent fee arrangement which will easily attract competent counsel. The numerous cases on the United Mine Workers pension fund are typical. Employer assistance would be unnecessary in such cases to protect

the workers' rights. But when the union is the plaintiff, all the burdens are entirely of its own making, and the individual defendants clearly need help. In such a case there is little room for a contingent fee, and the interested employer is the only likely source of an adequate defense of the worker's rights under the Landrum-Griffin Act. Before that law was passed, a worker could have asked his employer to pay any kind of costs or do any other act so long as there was no unfair labor practice. The circuit court properly held that the Act should not be construed to destroy this very limited protection for an employee-*defendant*. Such an interpretation would actually increase union power over the individual members above what it was before. A proviso to a remedial statute should not be construed to weaken that remedial purpose. *Spokane & Inland R.R. Co.* v. *United States,* 241 U. S. 344 (1916); *Shilkret* v. *Musicraft,* 131 F. 2d 929 (C. A. 2, 1942), *cert. den.,* 319 U. S. 742 (1942).

Of course, if an employer's activities in litigation should coerce or interfere with a union or its members improperly, there would be a violation of the National Labor Relations Act. But, as noted above, the General Counsel of the Labor Board found, after an investigation, that there had been no such coercion or interference in this case.

This record does not show whether these fines comply with the statutes, the Union documents, the "Murphy letter," or the other facts. All of those complicated issues are still to be decided in the state court suit brought for the Union. But if the employees are deprived of all legal assistance by this suit, it is virtually certain that those issues will eventually be resolved in favor of the Union officers, no matter what the law and the facts may be, or how "deeply felt" may be the members' grievances. Hence the Union will always be denied the important democratic benefits which are so eloquently praised in the second, third and fourth sentences of page 14 of its own petition.

This Court has been vigilant to protect the rights of criminal defendants to adequate legal assistance. It should not deny civil

defendants the same protection where the only statute being invoked by the Union was designed to be a major limitation on the abuse of power by unions.

There are other defenses to this suit, but the wording and intent of Section 101 of the Landrum-Griffin Act are both so clear that the petition should be denied on that ground alone.

Respectfully submitted,

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APPENDIX A.

STATUTES INVOLVED.

"SUBCHAPTER II.—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

"§ 411. Bill of rights; constitution and bylaws of labor organizations

"(a) (1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

"(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

"(3) Dues, initiation fees, and assessments.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not

be increased, and no general or special assessment shall be levied upon such members, except—

"(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

"(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

"(4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organiza-

tion, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

"**(5) Safeguards against improper disciplinary action.**—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

"(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect." Pub. L. 86-257, Title I, § 101, Sept. 14, 1959, 73 Stat. 522. (Italics in original.)

APPENDIX B.

(Appendix C to the Union's Complaint.)

[ILLINOIS BELL TELEPHONE COMPANY LETTERHEAD]

October 1, 1970

Mr. Thomas L. Beagley
President-Business Manager
Local 336, I. B. E. W.
188 West Randolph Street, Room 2505
Chicago, Illinois

Dear Mr. Beagley:

Shortly before and after November 1, 1968, some members of Local 336 were informed that they had been fined by the Union for strike-connected activity. Many of these employees reported this fact to their supervisors and requested advice as to what they ought to do. The Company advised them that they should appeal the fines to the International Union and make the installment payments necessary for the prosecution of such appeals.

In so advising its employees, the Company was relying upon the so-called "Murphy letter" (copy attached), in which the International Union's Director of Telephone Operations assured the Company that the International would use its best offices to prevent punitive action against employees for strike-connected activity. The Company, with charming naivete, expected that the fines would be vacated in accordance with the Murphy letter.

When the employees were advised in the spring of 1969 that their appeals had been disallowed, they were told by the

Company that it would reimburse them for the installment payments on the fines, and it did so, the last such payment in reimbursement being made on July 21, 1969.

Local 336 employees were also told that the Company would pay the cost of defending the lawsuits brought to collect the unpaid fines. This is a continuing undertaking, the Company now being committed to paying for the defense of the suits presently pending.

Sincerely,

/s/ STANLEY D. SCHIEBER